

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, JULY 25, 2016  
6:30 P.M.**

**APPROVED**

**SELECTMEN PRESENT:** Brown, Hughes, Kavanagh, LaMantia, MacAskill

**OTHERS PRESENT:** Town Administrator Christopher Clark, Assistant Town Administrator Charleen Greenhalgh, Lincoln Hooper, Ginny Hewitt, Sharon Pflieger, and others.

**MEETING CALLED TO ORDER** at 6:30 p.m. by Chairman MacAskill.

**WEEKLY BRIEFING**

Library Director Ginny Hewitt briefed the Board on a problem with the emergency light inverter system at the library.

**CONSENT AGENDA**

- A. Approve Minutes –
  - 1. June 5, 2016 Wastewater Subcommittee/Board of Selectmen Regular Session
  - 2. June 6, 2016 Regular Session
  - 3. June 13, 2016 Regular Session
- B. Approve application for Fair at Pilgrim Congregational Church for August 5 & 6, 2016
- C. Approve Election Officers as recommended by the Democratic and Republican Town Committees
- D. Accept resignation of Mayla Secola from the Harwich Housing Committee
- E. Award contract for Catch Basin Replacement and Installation to GFM Enterprises Inc. in the amount of \$281,300
- F. Award contract for replacement of the DPW building siding to Architectural Consulting Group in the amount of \$97,500
- G. Approve Caleb Chase Fund Request in the amount of \$614.82
- H. Vote to sign a letter of support for the CWMP for the Cape Cod Commission Hearing

Ms. Kavanagh moved approval of the Consent Agenda with the exception of Item C. Mr. Hughes seconded the motion. Mr. Hooper answered questions from Ms. Brown on Item E. The motion carried by a unanimous vote. Mr. Hughes recused himself on Item C. Ms. Kavanagh moved approval of Item C. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

**OLD BUSINESS**

- A. License Recognition Program at Landfill update – *Lincoln Hooper*

Mr. Hooper gave an update on the License Recognition Program noting that the system has far exceeded his expectations and everyone is extremely enthusiastic about it. He discussed the mechanics of how the system works. Mr. Hughes congratulated Mr. Hooper and his team for getting this done. Mr. Danya Mahota of Bonsai Logic and Mr. Hooper took questions regarding the operation of the system.

B. Status report on Saquatucket Harbor Waterside RFP Process – *John Rendon*

Mr. Clark outlined the following update from Mr. Rendon dated July 14, 2016:

A quick update on the status of the project. We are still waiting for permit approval from the Army Corps of Engineers (ACOE) for the proposed dredging and reconfiguration of the harbor. The application from Bourne Engineering was submitted to ACOE and applicable state agencies back in March. Dredge samples of the harbor have been taken and chemistry testing has been completed and passed on to ACOE for review. We are waiting for a Suitability Determination on disposal of the material, we are hoping that results of the chemistry testing are sufficient, and approval is granted for offshore disposal at the Cape Cod Bay disposal site. If the ACOE determines that additional biological testing is required, this will cause a significant delay, and may prohibit us from dredging this coming winter. We should have a decision from ACOE within a week or so. We are also waiting for the combined Chapter 91 License / 401 Water Quality permit from the state (DEP). Approval from Coastal Zone Management (CZM) also is pending.

The engineering design of the new docks and services is in its final review phase. Bourne Engineering is prepared to go out to bid as soon as we have approval/permit from ACOE. They do not recommend going out to bid prior to ACOE approval, as there may be conditions that are placed on the permit, or worst case the permit is not approved. We really need to go out to bid no later than mid-August in order to give sufficient time for the docks to be constructed and a dredge contractor selected and scheduled. We are in regular engagement with the ACOE project manager and state officials, stressing the need to get permits approved as soon as possible.

C. OPEB Investment Policy Statement Amendment – *discussion and possible vote*

At Mr. Clark's recommendation, Mr. Hughes moved to adopt the Investment Policy Amendment as proposed by the Town Treasurer to exclude OPEB funds from the Investment Policy. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote. Mr. Hughes moved to adopt the Town of Harwich OPEB Liability Trust Investment Policy statement. Ms. Kavanagh seconded the motion and the motion carried by a unanimous vote.

D. Transfer Station & Beach Sticker Sales update – *discussion*

Chairman MacAskill noted that we have not changed our policy on the sale of these stickers but are rather enforcing a policy that has been on the books. Mr. Clark outlined Treasurer Amy Bullock's email of July 18, 2016 regarding sticker sales (attached).

E. Library Exterior Preservation Project – *discussion and possible vote*

The Board discussed Library Director Ginny Hewitt's letter of July 12, 2016 (attached). No action was taken on this item as it was agreed to wait to select a vendor in the interest of getting the best value for the taxpayers.

## **NEW BUSINESS**

### **A. Letter from Sandra Hall regarding Harwich Home Rule Charter – *discussion and possible vote***

The Board discussed the letter from Sandra Hall dated June 26, 2016 regarding the Home Rule Charter. Mr. LaMantia disputed some of the statements in the letter including that he has not witnessed any Selectmen going directly to department heads. Mr. Hughes stated that they should ask Ms. Hall if she knows of any particular instances. He added that there needs to be somewhere employees can go to if they know of this going on, perhaps to an ombudsman or the Town Administrator. Mr. LaMantia stated that there is an unbelievable amount of mistakes in the letter and it is a dangerous document. He said they need to sit down with Ms. Hall and go through each item line by line. He gave further examples of mistakes in the letter. Mr. Hughes said this should be given to the Moderator and Finance Committee to get their feedback as they are mentioned several times in the letter. He suggested that Mr. LaMantia and Mr. MacAskill sit down with Ms. Hall and figure out if these are issues or non-issues and bring this back. Mr. LaMantia asked that he meet with the Town Administrator and Ms. Hall instead and the Board agreed. Mr. Clark said he would send to the Finance Committee and Moderator as well.

### **B. Board of Selectmen FY17 Goals and Objectives – *discussion and possible vote***

Mr. MacAskill stated that he has received comments from Ms. Brown, Mr. Hughes and Mr. LaMantia and he has met with Ms. Greenhalgh on this. Mr. LaMantia suggested that there be 3 or 4 goals for the Town Administrator and 3 or 4 goals for the Board. He stated that all these goals cannot be done in a year and we could just have a spreadsheet as to the status of the projects. Ms. Kavanagh commented that the document is a helpful tool but some of these are ongoing projects. Ms. Brown moved to accept these Goals and Objectives as written. Ms. Kavanagh seconded the motion. Mr. LaMantia said this should not be used as part of the evaluation of the Town Administrator but they could vote for the list and then take 3 or 4 items from it to be done between now and April. Chairman MacAskill pointed out that they are voting on the Board's goals and objectives and Mr. Clark still has to come back to us with his goals. Mr. Hughes said they should be going through each item and discussing before they vote. He suggested the Board do this at a single Board meeting. Mr. Clark said there should be guidance as to prioritization of these goals and there should be a Selectman liaison for each one. Mr. MacAskill stated that the goals and objectives can be changed at any time and added that the list can certainly be prioritized. Ms. Kavanagh said this is a way to move forward and she doesn't see this as a debilitating document. The motion carried by a 3-2-0 vote with Mr. LaMantia and Mr. Hughes in opposition.

## **TOWN ADMINISTRATOR'S REPORT**

### **A. Upcoming CCMHG Updated Agreement**

Mr. Clark informed the Board that the Cape Cod Municipal Health Group's Joint Purchase Agreement is in the process of being updated and he will be bringing back a draft for the Board to consider.

B. Update on new Public Records Law

Mr. Clark noted that Town Counsel has provided us with an update on the new Public Records Law and we will be scheduling an informational meeting on it. He added that the Town Clerk, who is identified as keeper of the records by State law, should service in the capacity of Records Access Officer. He said he would bring back a formal recommendation for the Town Clerk to serve in that role.

C. Modular buildings behind the Middle School

Mr. Clark reported that the Police Department had an interest in having the 2 trailers for storage but the quote to move them was \$35,000. He said we would get together a bid to dispose of the buildings. He added that they would be getting a quote to fix the hot water system at the Middle School.

D. FEMA - Letter of Map Revision

Mr. Clark reported that FEMA sent a letter looking for a map revision now that Muddy Creek is a bridge system. He said he would check with the Town Engineer to see what we have to do.

E. KP – Prevailing Wage Law for Volunteers and Inmates

Mr. Clark reported that Town Counsel has given us a legal opinion on prevailing wage law and as long as volunteers and inmates follow their own direction we do not have to follow prevailing wage law.

F. Non Resident Taxpayers meeting – August 8, 2016

Mr. Clark announced the upcoming Non Resident Taxpayers meeting and the topics to be discussed.

**SELECTMEN'S REPORT**

A. Chatham/Harwich Wastewater Subcommittee Meeting – *update*

Mr. Clark reported that both subcommittees met on the IMA and there are still issues to work out. Mr. Hughes noted that they worked through the entire marked up IMA with the exception of costs and they will be reviewing the cost material with Bob Duncanson on Thursday. He stated that it was a very positive meeting and suggested that once we get the numbers that he, Mr. LaMantia and Mr. Clark sit down and come up with a strategy and justification as to what we think the value is to Harwich and bring back to the Board for consideration. He added that they should discuss details such as depreciation and interest and he noted that there is another meeting set for August 17, 2016.

B. Committee vacancy advertising – *discussion and possible vote*

Chairman MacAskill stated that it is in the Charter that we have to advertise the committee vacancies weekly and we should discuss if we want to send a letter to the By-Law Charter Review Committee to discuss changing that requirement. Mr. Hughes said we should find out if this is strictly imposed by Charter or does it have something to do with State law. The Board discussed the expense involved with advertising every week and also the need to take advantage of current information technology including social media, website and online advertising. The consensus of the Board was that Mr. LaMantia, as liaison to the By-Law Charter Review Committee, would send a note to the Committee asking them to review this.

C. General discussion on Committees – *discussion and possible vote*

1. Vacancies
2. Charge updates
3. Members being sworn in

Chairman MacAskill said we should start reviewing committee charges and frequency of committee meetings prior to the upcoming annual meetings. He noted that some committees meet infrequently and some committee members haven't been sworn in or taken the ethics test. He asked the liaisons to gather as much information as possible and speak to their chairmen and he would schedule this on an agenda in 4-6 weeks.

**ADJOURNMENT**

Mr. Hughes moved to adjourn at 8:44 p.m. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary

**Charleen Greenhalgh**

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**From:** Amy Duffy  
**Sent:** Monday, July 18, 2016 12:05 PM  
**To:** Charleen Greenhalgh  
**Subject:** sticker sales  
**Attachments:** Beach Sticker policy.doc

Hi Charleen,

I am responding to our conversation about Mr. MacAskill's concerns regarding sticker sales and what has changed this year. I've attached a copy of the Rec Commission's policy on beach stickers, which describes who is entitled to a residential rate beach sticker. While I've never seen a written policy for transfer station permits, I think it is reasonable to assume similar guidelines, especially as there is now a "non-resident" rate.

I was surprised to hear there were more complaints about the transfer station than the beach stickers. We do have many complaints about not allowing resident rate beach stickers to family members and friends as had happened in the past. As far as the transfer station, the big change is that this is the first year for license plate recognition. There is no physical sticker issued. A resident or taxpayer pays \$160 for the first car, and \$25 each for additional cars *owned and registered to themselves*. They do not get a \$25 permit for family members, neighbors nor friends visiting. It appears in the past, and I have heard multiple people admit, that there was much "sharing" of the transfer station stickers in previous years. I have had many taxpayers freely admit that they left the sticker at the house for family and friends and/or shared it with neighbors.

As for the actual sales of the beach stickers and transfer station access, this year there are 5 brand new customer service representatives selling at the Community Center (3 per shift), the Chamber sells them with a convenience fee of \$3, and we sell them here in the Treasurer's Office during normal Town Hall hours. I did cut back the Community Center hours from 8-3 in the past to 8-2 this year, mainly because the longer shift required by law a 30 minute break for the employee, and there is simply no opportunity to get up and leave a terminal when there are people waiting in line to purchase a permit.

The sellers are instructed to ask for vehicle registrations for *every sale*. If a registration has an out of town address, then proof of residency or property ownership is required. This is NOT a change in procedure, aside from the fact that in the past it was not adhered to as strictly. All day long we are told "I am in the system". We require a valid registration for every vehicle, in the system or not. Period. We go out of our way to look up property records for people who are unprepared, which only slows down the process for everyone else.

Obviously, there are instances where a judgement call must be made; i.e. homeowners who do not drive and have a relative or friend who goes to the transfer station or takes them to the beach. We are all doing our best to be fair, polite and consistent. We do get plenty of angry customers, but I have mostly witnessed that for beach stickers, not disposal access. I've also had several people who are very glad we are enforcing the Rec Commission's policy, as beach parking is hard to come by!

I am happy to speak with anyone who has a comment or concern. However; I and the staff are only enforcing the rules in place, we don't make them. Any changes to the policy would be made by the Rec and Youth Commission for beach or the Highway Department for transfer station.

Amy Bullock, CMMC – CMMT  
Treasurer/Town Collector  
[abullock@town.harwich.ma.us](mailto:abullock@town.harwich.ma.us)

BOS (Michael  
McAskill)

**Brooks Free Library**  
739 Main St., Harwich, MA 02645  
Phone: (508) 430-7562  
Email: [vhewitt@clamsnet.org](mailto:vhewitt@clamsnet.org)



*Ginny Hewitt*

From: Ginny Hewitt, Library Director

To: Greg Winston, Chairman, Historic District Historical Commission

CC: Jeannie Wheeler, Co-Chair, Building and Grounds Committee, Library Board of Trustees  
JoAnne Brown, Co-Chair, Building and Grounds Committee, Library Board of Trustees  
Mary Warde, Chair, Brooks Free Library Board of Trustees  
Joan McCarty, Vice Chair, Brooks Free Library Board of Trustees  
Jeanne Steiner, HDHC liaison to Brooks Free Library  
Sean Libby, Facilities Manager  
Robert Cafarelli, Town Engineer  
Christopher Clark, Town Administrator  
Michael MacAskill, BOS Chairman and Liaison to HDHC  
Julie Kavanaugh, BOS Liaison to Brooks Free Library Board of Trustees  
Robert MacCready, Chair, Community Preservation Committee

Subj: Update on Library Exterior Preservation Project

Ref: HDHC letter of Feb. 9, 2016 documenting your support for the request for Community Preservation funding to preserve the historic portions of the Library exterior

Date: July 12, 2016

The Library Trustees' Building and Grounds Committee has asked me to notify you of a change in the management of the Library exterior preservation project and provide a status update for your July monthly meeting next week.

The impact of the full centralization of building maintenance was discussed by the Board of Selectmen, Town Administrator and Library Trustees at the Selectmen's May 31, 2016 meeting. It was agreed that the Library Trustees and Library Director are no longer responsible building maintenance, including managing the exterior preservation project recently approved at Town Meeting. This means that any requests for a Certificate of Appropriateness or Non-Applicability for changes visible from a public way will be requested from the HDHC by other Town officials (i.e., Town Engineer or Facilities Manager), not the Library Trustees or Library Director. This letter is to inform you of this change as your Feb. 9, 2016 letter states a Library representative will return to the HDHC seeking any future approvals needed for this project.

To update you on the status of the project, no contract has been signed yet for the architectural services. We began the procurement process in early March, providing draft procurement

specifications detailing the architectural services needed in the hopes that the architect could be selected and a contract issued in late spring using currently available CPC funds rather than waiting until July 1<sup>st</sup> to begin work on this. After reviewing procurement regulations, the Town Engineer determined a formal procurement process was not necessary. In May he recommended to the Selectmen that the Town contract with the architects who performed the feasibility. The Trustees advised the Selectmen they were in favor of this approach, and after some discussion they left the May 31st meeting with the understanding that this was what would happen. On June 13<sup>th</sup>, however, the Selectmen approved contracting with that firm but only if the cost of the architectural services was under \$25,000. If the cost was higher than \$25,000 the Selectmen voted that a formal procurement process should be followed, with bids solicited from other firms.

This was a surprise to the Trustees since the Selectmen had previously indicated they would accept the recommendation of the Engineer, Facilities Manager, Town Administrator and Trustees. The \$25,000 limit is significantly below the estimate for architectural services provided by the consultants in their report, which historic preservationists had already indicated were not out-of-line for high quality historic preservation work. (Note: The consultant's report estimated the cost of architectural services at \$64,000. While this amount may be reduced somewhat since some preservation work has been deferred and was not included in the project, it is still likely to be well over the \$25,000 limit set by the Selectmen.) In addition, funds for the full amount of the estimate are included in the funding approved by CPC.

As of this writing it is not clear yet if the Town will be contract with the architectural firm that did the feasibility study, which will require a new vote by the Selectmen, or if the Town will do a formal procurement process and solicit bids from other firms. Until this is determined and a contract is issued for architectural services, no progress will be made on this project.

Thank you again for your support of CPC funding this project. Further details and status updates will have to be provided to you by other Town officials as the Library is not responsible for managing this project going forward.

P. O. Box 426  
South Harwich, MA 02661  
June 26, 2016

Michael MacAskill, Chairman  
Board of Selectmen  
Town of Harwich  
732 Main St.  
Harwich, MA 02645



RE: Harwich Home Rule Charter

Dear Chairman MacAskill:

Pursuant to inquiries from your board and the Finance Committee during the 2016 town meeting season with respect to Harwich Home Charter, the following is an outline of areas of concern observed the recent past or are currently occurring. The issues are addressed in order of placement in the Charter:

2-8-2 All articles involving an expenditure of town funds shall be considered by the finance committee which shall issue a written recommendation on all such articles. The chairman of the committee, or a designated representative, shall be present at the town meeting to provide verbal explanations of the committee's recommendations.

**The Finance Committee is arguably acting outside of its authority in considering and making recommendations on non-monetary matters.**

3-2-2 The board of selectmen shall cause the laws and orders for the government of the town to be enforced and shall cause an up-to-date record of all its official acts to be kept.

**Issues raised in this letter would suggest that the Board of Selectmen has not fulfilled its duties in this respect.**

3-7-1 Except for the purpose of investigation authorized by this charter, the board of selectmen or its members shall deal with town officers and employees who are subject to the direction and supervision of the town administrator solely through the town administrator, and neither the board nor its members shall give orders to these officers or employees, either publicly or privately.

**Anecdotal evidence suggests that over recent years, some members of the Board of Selectmen have routinely violated this directive. Unfortunately, those most directly impacted by this (i.e. town employees) are reticent to publicly address it due to understandable concerns for their jobs.**

4-5-2 The creation of any new full-time, compensated position which requires the approval of the board of selectmen shall not become effective until the position has been funded by a vote of town meeting.

**It is hard to follow just how the establishment of the position of Wasterwater/Water Superintendent came to be, but apart from the process, this clearly represents a new position that was not voted or funded by Town Meeting for a department (Wastewater) that has never been officially established. In addition, this position now appears to be under split jurisdiction, i.e., part Water Commission and part Town Administrator. It is difficult, as a practical matter, to see how this functions.**

6-3-1 A moderator shall be elected for a 3-year term. The moderator shall: a) preside at all town meetings; b) appoint the members of the finance committee; c) appoint ad hoc committees of the town meeting under clause 2-7-1; d) preside at any hearing called to discuss the suspension or removal of the town administrator; and e) annually attend at least 3 meetings of the finance committee.

**A search of Finance Committee minutes shows no indication of attendance of the Town Moderator at any time since online records are available dating to late 2014.**

6-6-3 The (Water) commission shall appoint a water superintendent, and shall request this officer to cooperate with, and be responsive to, requests from the town administrator's office.

**According to the Charter, the Water Commission is responsible for the hiring of the Water Superintendent who is then directed to "cooperative with a be responsive to requests from the Town Administrator". Nowhere does it say this person is hired either by the Board of Selectmen or the Town Administrator.**

**Recently, the Water Superintendent position has morphed into a Water/Wastewater Superintendent. This is a new position never authorized or funded through Town Meeting or, as far as it can be determined, with the involvement of the Water Commission as required by Charter. In addition, this position appears to be something of a hybrid having been half appointed (Wastewater portion) by the Town Administrator and half appointed (Water Superintendent) by the Board of Selectmen/Water Commission. Aside from the violations implied, it also effectively leaves this position with two masters.**

7-1-1 To ensure a diverse citizen representation on all appointed town agencies, the board of selectmen shall make a concerted effort to seek out qualified persons from the town when filling vacancies, and year-round Harwich residents shall be given preference for appointment to any town agency.

**It appears that a number of people either recently or currently serving on Harwich committees and are not "from the town" of Harwich including members of the Treasure Chest Committee and at least one member of the Planning Board who was not a legal resident of the Town of Harwich at the time of appointment. Other instances may exist, but these appointments were not thoroughly researched for purposes of this letter.**

7-1-2 To further promote a maximum level of qualified, active, and interested citizen participation on appointed town agencies, the board of selectmen shall advertise all vacancies and impending appointments. This advertising shall enumerate the vacancies that are to be filled and shall solicit the submission of a citizen activity record form from persons willing and able to serve. The advertisements shall be published in a newspaper of general circulation in the town and shall be made once a week for a minimum of 2 weeks after the vacancy arises.

**As of mid-May of this year, it does not appear that the Board of Selectmen has strictly adhered to this directive, in particular with the requirement for newspaper advertising.**

7-1-4 Before making appointments to the finance committee, the moderator shall also make an effort to seek out qualified persons to serve and shall cause a notice to be published enumerating the vacancies to be filled and setting forth the location, time and date when the moderator will be available to interview persons willing and able to serve. The advertising of vacancies on the finance committee shall also be published in a newspaper of general circulation in the town and shall be made once a week for a minimum of 2 weeks after a vacancy arises.

**As of mid-May of this year, it does not appear that the Town Moderator has strictly adhered to this directive, in particular with the requirement for newspaper advertising.**

7-2-2 All town agencies of the town shall; a) organize annually; b) elect necessary officers; c) adopt rules of procedure and voting; d) maintain minutes and records of attendance, copies of which shall be a public record and regularly filed with the town clerk; and e) nominate prospective employees of their choice, who shall then be considered for appointment by the town administrator, as provided in clause 4-4-2.

**Anecdotal evidence suggests that a number of boards and committees do not organize annually or adopt rules of procedure as specified. In addition, at least one major board, i.e., Board of Health, not only failed to reorganize as stipulated, but for some period of time had or has, worked on a practice of rotating interim chairs appointed either just before a meeting was convened or at the start of the meeting despite not being included on the agenda for that meeting.**

7-2-4 All town agencies shall conduct their meetings under the open meeting provisions of the Open Meeting Law.

**As of this writing, recent issues with the Community Center Facilities Committee in this regard appear to have gone unaddressed by the Board of Selectmen as a whole.**

**Apparently, this issue was addressed with a member of the CCFC at a meeting of the Selectmen's Interview Subcommittee. While this was a posted meeting of the two-selectman committee, it is difficult to see this as a proper function of an "Interview/Nominating" Subcommittee. The questionable subcommittee assignment, taken with the fact that to date no report or recommendation has come back to the full board, appears at the very best to be an artful way to keep this issue out of the public view, and at worst, as an end run around the intent, if not the letter, of the Open Meeting Law.**

7-2-6 Any person duly appointed to a town agency shall take up the duties of that office immediately upon taking the oath of office.

**This is also a matter of State Law, but public records show that a significant number of people serving on boards and committees have never been sworn in, some over a very long periods of time. This could call into question any and all actions by governmental boards and committees with unsworn members voting. Most seriously, this involves major positions such as the Town Moderator, who was elected in May of 2015 but wasn't sworn in until the day of Town Meeting 2016. This would call into question the validity and legality of any actions taken during the period when the Town did not have a "duly sworn" moderator, including appointments made by the Moderator to the Finance Committee and Caleb Chase Fund Committee. Among the many others who remained unsworn up until at least mid-May of this year are appointees to the Capital Outlay Committee, Community Center Facilities Committee, and Board of Appeals. Again, this raises concerns of the legality of actions taken by these Boards and Committees to the extent of the impact of the votes of unsworn members with regards to the ultimate decisions of those boards.**

7-5-1 A planning board of 9 members and 2 alternate members shall be appointed by the board of selectmen for 3-year overlapping terms.

**Planning Board members have been appointed in such fashion as to create a situation where at least five of the terms expire simultaneously. While it is understood that this issue will be addressed shortly, it is a further example of non-compliance with the clear terms of the Charter.**

7-16-2 The by-law/charter review committee shall also be responsible for reviewing all articles proposing to change the by-laws or charter, and all such articles shall be submitted by the board of selectmen to the by-law/charter review committee not later than 14 days after the deadline for submission of articles.<sup>4</sup>

**According to minutes as well as information provided by the Chairman of the ByLaw and Charter Review Committee, no such submissions were received during the most recent cycle or over the past several years when the committee itself never met due to lack of sufficient membership to conduct business. Important by law and charter changes not properly referred this year included the Police Departments "door to door soliciting" and others. The failure of the Board of Selectmen to make the necessary appointments to this committee for a number of years is also a clear violation of the Charter.**

9-1-3 Vacancies in the finance committee shall be filled by the moderator within 30 days after the moderator has been notified, in writing, of the vacancy on the committee. Any person appointed to fill out an unexpired term shall take up the duties immediately upon taking the oath of office.

**Several vacancies have existed on the Finance Committee over at least the past year for well in excess of 30 days despite the fact that a number of citizens have expressed willingness to serve in these positions.**

9-1-4 No member of the finance committee shall hold any other elected or appointed town office, except for membership in the capital outlay committee.

**No exceptions to this provision are outlined in the Charter including so-called "Advisory" groups although instances of such appointments appear to have occurred.**

9-6-2 A "capital outlay" shall mean the acquisition, construction or renovation of buildings, equipment or land having a total cost of \$50,000 during any budget year and planning funds for any such capital outlay.

**Numerous items under the \$50,000 threshold are included in the Capital Plan, and although some of these are found to be aggregated with unrelated items within categories to meet the threshold and many are noted as "Below \$50,000" on the Plan by the Capital Outlay Committee, this practice is not supported by the terms of the Charter.**

9-7-1 The finance committee shall publish, in 1 or more newspapers of general circulation in the town, the general summary of the capital outlay plan and a notice stating: a) the times and places where copies of the capital outlay plan are available for inspection; and b) the date, time, and place, not less than 7 days after the publication, when the committee shall conduct a public hearing on the plan.

**No record can be found that any such hearing was ever held; and it is questionable, at best, that the publication requirement is met by the general publication of the Warrant since it does not appear that the Warrant is published "in a newspaper of general circulation" in time to satisfy the public hearing requirement. In addition, this requirement is not satisfied by the submission of the Capital Outlay Plan by the Capital Outlay Committee to a joint public meeting of the Board of Selectmen and Finance Committee specified in the earlier Charter Section 9-6-3.**

Some members of recent boards, as well as the current board, have expressed "confusion" over the language of the Charter, particularly when the language does not suit the purposes of those members. One immediate past member of the Board even stated at a meeting several years back that "We don't always follow the Charter" or words to that effect.

Overall, the Charter is written in plain language and is generally very clear in its intent. The Charter was never designed to cover every nuance of town government but rather to provide a broad outline and to take advantage of options available to local governments under

Massachusetts General Law to structure local government in ways that may not exactly follow State law. Hence, the term "Home Rule." Where the Charter is silent on any particular issue or detail, the local government then looks to its own bylaws and to state law for instruction. Again, in keeping with the notion of "Home Rule", the framers of the Charter intended that adoption of changes to the Charter would be voted at Town Meeting and then submitted to the voters of the Town of Harwich for final passage. The practice in recent years of submitting amendments to the Massachusetts General Court flies in the face of that original intent and also allows the legislators to alter the language adopted by the town. And while this practice may be more convenient and expeditious, it also totally defeats the purposes of "Home Rule."

It should also be noted that in some cases, following the legislative route has allowed certain inconvenient amendments passed by Town Meeting to be delayed "in committee", one such example being the extended delay in the legislative adoption of the issue of town subsidized health insurance for elected officials.

Please note that the foregoing includes only issues easily identified through observation and public records. It is entirely possible, even likely, that additional problems exist. A thorough review of current and past practices should be undertaken at all levels of town government, as well as a step by step review of the charter itself and changes made if and where they are legitimately necessary. In addition, a more pro-active approach to educating board and committee members regarding proper procedures might be in order.

Several members the Board of Selectmen as well as the Chairman of the Finance Committee were very vocal at the recent Town Meeting in asserting that independent Charter enforcement is unnecessary and that any compliance issues can be handled "in house". Hopefully that will be the case going forward.

Thank you for your attention.

Sincerely,

Sandra Baylis Hall

## Related Documents - BOS Meeting 7/25/16

- 01 Agenda.pdf
- 02 Minutes July 5, 2016.pdf
- 03 Minutes June 6, 2016.pdf
- 04 Minutes June 13, 2016.pdf
- 05 Pilgrim Congregational Church Fair.pdf
- 06 Election Officers Appointment.pdf
- 07 Resignation - Mayla Secola.pdf
- 08 Drainage Contract.pdf
- 09 DPW Siding Replacement Contract.pdf
- 10 Cape Cod Commission Ltr.pdf
- 11 Lic Plate Recognition Program Update.pdf
- 12 Saquatucket Marina Project Update.pdf
- 13 OPEB Policy Amendment.pdf
- 14 Transfer Station and Beach Sticker Update.pdf
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